

No. 13-1068 PO

<sup>1</sup> All references to “CSR” are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update.

disputes such facts. Those facts may be established by stipulation, pleading of the adverse party, or other evidence admissible under the law.<sup>2</sup>

By failing to answer or otherwise respond to the complaint, Bakert has admitted the allegations it contains.<sup>3</sup> By failing to respond to the motion for summary decision, Bakert has failed to raise a genuine issue as to the facts the Director established in his motion.<sup>4</sup>

Accordingly, the findings of fact are based on the allegations contained in the complaint and the admissible evidence attached to the Director's motion: business records authenticated by a custodian of records affidavit and certified court documents from the criminal case against Bakert.

The following facts, based on this evidence, are undisputed.

### **Findings of Fact**

1. Bakert was licensed as a peace officer by the Director at all relevant times.
2. On December 19, 2012, in the Saline County Circuit Court, Bakert pled guilty to one count of possession of methamphetamine<sup>5</sup> – a controlled substance<sup>6</sup> – a Class C felony, and one count of unlawful use of drug paraphernalia<sup>7</sup> – a Class A misdemeanor.
3. The court sentenced Bakert to seven years in the custody of the Department of Corrections on the possession count, suspended the execution of sentence, and placed Bakert on five years' probation. The court fined Bakert \$500 on the drug paraphernalia count.

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<sup>2</sup> 1 CSR 15-3.446(6)(B).

<sup>3</sup> 1 CSR 15-3.380(7)(C).

<sup>4</sup> 1 CSR 15-3.446(6)(B).

<sup>5</sup> § 195.205. Statutory references are to RSMo. Supp. 2012 unless otherwise noted.

<sup>6</sup> § 195.017.4(3)(c).

<sup>7</sup> § 195.233, RSMo. 2000.

### Conclusions of Law

We have jurisdiction to hear this case.<sup>8</sup> The Director has the burden of proving that Bakert has committed an act for which the law allows discipline.<sup>9</sup> The Director alleges that there is cause for discipline under § 590.080.1, which provides:

1. The director shall have cause to discipline any peace officer licensee who:

\* \* \*

(2) Has committed any criminal offense, whether or not a criminal charge has been filed.

Bakert pled guilty to one count of possession of a controlled substance and one count of possession of drug paraphernalia and was sentenced on both counts. A conviction resulting from a guilty plea collaterally estops the issue of whether the person committed the criminal offense.<sup>10</sup> Bakert committed two criminal offenses. His conduct falls squarely under § 590.080.1(2).

### Summary

Bakert is subject to discipline under § 590.080.1(2). The hearing presently scheduled for December 4, 2013 is canceled.

SO ORDERED on October 8, 2013.

\s\ Sreenivasa Rao Dandamudi  
SREENIVASA RAO DANDAMUDI  
Commissioner

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<sup>8</sup> § 590.080.2.

<sup>9</sup> *Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App. E.D. 1989).

<sup>10</sup> *James v. Paul*, 49 S.W.3d 678, 682-83 (Mo. 2001); *Carr v. Holt*, 134 S.W.3d 647, 649 (Mo. App. E.D. 2004).